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ENDORSED  
FILED  
ALAMEDA COUNTY  
AUG 27 2018  
CLERK OF THE SUPERIOR COURT  
By Lanette Buffin, Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF ALAMEDA**

11 ENVIRONMENTAL RESEARCH CENTER,  
12 INC., a non-profit California corporation,

13 Plaintiff,

14 vs.

15 ADAPTOGEN SCIENCE, LLC, a Florida  
16 limited liability company,

17 Defendant.

Case No.

18918320

18 **COMPLAINT FOR INJUNCTIVE  
19 RELIEF AND CIVIL PENALTIES**

20 Health & Safety Code §25249.5, *et seq.*

21 Plaintiff Environmental Research Center, Inc. ("PLAINTIFF" or "ERC") brings this  
22 action in the interests of the general public and, on information and belief, hereby alleges:

23 **INTRODUCTION**

24 1. This action seeks to remedy the continuing failure of Defendant ADAPTOGEN  
25 SCIENCE, LLC ("ADAPTOGEN" or "DEFENDANT") to warn consumers in California that  
26 they are being exposed to lead and/or cadmium, substances known to the State of California to  
27 cause cancer, birth defects, and other reproductive harm. DEFENDANT manufactures,  
28 packages, distributes, markets, and/or sells in California certain products containing lead and/or  
cadmium (collectively, the "PRODUCTS"):

- Adaptogen Science Tasty Whey 100% Premium Whey Protein Sea Salt Caramel (lead)
- Adaptogen Science Tasty Whey 100% Premium Whey Protein Vanilla Creme (lead)

- Adaptogen Science Tasty Whey 100% Premium Whey Protein Chocolate Peanut Butter (lead)
- Adaptogen Science Tasty ISO Hydrolyzed 100% Whey Protein Isolate Chocolate Truffle (lead and cadmium)
- Adaptogen Science Tasty ISO Hydrolyzed 100% Whey Protein Isolate Vanilla Sundae (lead)
- Adaptogen Science Tasty Whey 100% Premium Whey Protein Cookie Butter (lead)
- Adaptogen Science Tasty Whey 100% Premium Whey Protein Cookies & Cream (lead)
- Adaptogen Science Tasty Whey Deluxe Instantized 100% Pure Whey Protein French Vanilla Swirl (lead)
- Adaptogen Science Tasty Whey Deluxe Instantized 100% Pure Whey Protein Chocolate Meltdown (lead)

2. Lead and cadmium (hereinafter, the "LISTED CHEMICALS") are substances known to the State<sup>1</sup> of California to cause cancer, birth defects, and other reproductive harm.

3. The ingestion of the PRODUCTS causes exposure to the LISTED CHEMICALS at levels requiring a "clear and reasonable warning" under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code") section 25249.5, *et seq.* (also known as "Proposition 65"). DEFENDANT has failed to provide the health hazard warnings required by Proposition 65.

4. DEFENDANT's past and continued manufacturing, packaging, distributing, marketing, and/or sales of the PRODUCTS without the required health hazard warnings, causes or threatens to cause individuals to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICALS that violate or threaten to violate Proposition 65.

5. PLAINTIFF seeks injunctive relief enjoining DEFENDANT from the continued manufacturing, packaging, distributing, marketing, and/or sales of the PRODUCTS in California without provision of clear and reasonable warnings regarding the risks of cancer, birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICALS through the ingestion of the PRODUCTS. PLAINTIFF seeks an injunctive order compelling DEFENDANT to bring its business practices into compliance with Proposition 65 by providing

<sup>1</sup> All statutory and regulatory references herein are to California law, unless otherwise specified.

1 a clear and reasonable warning to each individual who has been and who in the future may be  
2 exposed to the LISTED CHEMICALS from the ingestion of the PRODUCTS. PLAINTIFF also  
3 seeks an order compelling DEFENDANT to identify and locate each individual person who in  
4 the past has purchased the PRODUCTS, and to provide to each such purchaser a clear and  
5 reasonable warning that ingestion of the PRODUCTS will cause exposures to the LISTED  
6 CHEMICALS.

7 6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil  
8 penalties up to the maximum civil penalty of \$2,500 per day per exposure authorized by  
9 Proposition 65 to remedy DEFENDANT's failure to provide clear and reasonable warnings  
10 regarding exposures to the LISTED CHEMICALS.

#### 11 JURISDICTION AND VENUE

12 7. This Court has jurisdiction over this action pursuant to California Constitution  
13 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes  
14 except those given by statute to other trial courts." The statute under which this action is  
15 brought does not specify any other basis for jurisdiction.

16 8. This Court has jurisdiction over DEFENDANT because, based on information  
17 and belief, DEFENDANT is a business having sufficient minimum contacts with California, or  
18 otherwise intentionally availing itself of the California market through the manufacture,  
19 distribution and sale of the PRODUCTS in the State of California, to render the exercise of  
20 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
21 substantial justice.

22 9. Venue in this action is proper in the Alameda Superior Court because the  
23 DEFENDANT has violated or threatens to violate California law in the County of Alameda.

24 10. On June 15, 2018, PLAINTIFF sent a 60-Day Notice of Proposition 65 Violation  
25 to the requisite public enforcement agencies and to ADAPTOGEN. The Notice was issued  
26 pursuant to, and in compliance with, the requirements of H&S Code section 25249.7(d) and the  
27 statute's implementing regulations regarding the notice of the violations to be given to certain  
28 public enforcement agencies and to the violators. The Notice included, *inter alia*, the following

1 information: the name, address, and telephone number of the noticing individuals; the name of  
2 the alleged violator; the statute violated; the approximate time period during which violations  
3 occurred; and descriptions of the violations, including the chemicals involved, the route of toxic  
4 exposure, and the specific product or type of product causing the violations, and was issued as  
5 follows:

- 6 a. DEFENDANT was provided a copy of the Notice by Certified Mail.
- 7 b. DEFENDANT was provided a copy of a document entitled "The Safe  
8 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
9 Summary," which is also known as Appendix A to Title 27 of CCR §25903.
- 10 c. The California Attorney General was provided a copy of the Notice via  
11 online submission.
- 12 d. The California Attorney General was provided with a Certificate of Merit by  
13 the attorney for the noticing parties, stating that there is a reasonable and  
14 meritorious case for this action, and attaching factual information sufficient  
15 to establish a basis for the certificate, including the identity of the persons  
16 consulted with and relied on by the certifier, and the facts, studies, or other  
17 data reviewed by those persons, pursuant to H&S Code §25249.7(h)(2).
- 18 e. The district attorneys, city attorneys or prosecutors of each jurisdiction within  
19 which the PRODUCTS are offered for sale within California were provided  
20 with a copy of the Notice pursuant to H&S Code § 25249.7(d)(1).

21 11. At least 60 days have elapsed since PLAINTIFF sent the Notice to  
22 DEFENDANT. The appropriate public enforcement agencies have failed to commence and  
23 diligently prosecute a cause of action under H&S Code section 25249.5, *et seq.* against  
24 DEFENDANT based on the allegations herein.

#### 25 PARTIES

26 12. PLAINTIFF is a non-profit corporation organized under California's Corporation  
27 Law. ERC is dedicated to, among other causes, reducing the use and misuse of hazardous and  
28 toxic substances, consumer protection, worker safety, and corporate responsibility.

1           13.     ERC is a person within the meaning of H&S Code section 25118 and brings this  
2 enforcement action in the public interest pursuant to H&S Code section 25249.7(d).

3           14.     DEFENDANT ADAPTOGEN SCIENCE, LLC is a limited liability company  
4 organized under the laws of the State of Florida, and is a person doing business within the  
5 meaning of H&S Code section 25249.11.

6           15.     DEFENDANT has manufactured, packaged, distributed, marketed, and /or sold  
7 the PRODUCTS for sale and/or use in California and the County of Alameda. ERC is informed  
8 and believes, and thereupon alleges, that DEFENDANT continues to manufacture, package,  
9 distribute, market and/or sell the PRODUCTS for sale and/or use in California and in Alameda  
10 County. DEFENDANT knows and intends that the PRODUCTS are distributed, marketed and  
11 sold to consumers in California.

12                               **STATUTORY BACKGROUND**

13           16.     The People of the State of California have declared in Proposition 65 their right  
14 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other  
15 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

16           17.     To effect this goal, Proposition 65 requires that individuals be provided with a  
17 "clear and reasonable warning" before being exposed to substances listed by the State of  
18 California as causing cancer or reproductive toxicity. H&S Code section 25249.6 states, in  
19 pertinent part:

20                   No person in the course of doing business shall knowingly and intentionally  
21                   expose any individual to a chemical known to the state to cause cancer or  
22                   reproductive toxicity without first giving clear and reasonable warning to such  
23                   individual....

24           18.     "'Knowingly' refers only to knowledge of the fact that a discharge of, release of,  
25 or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No  
26 knowledge that the discharge, release or exposure is unlawful is required." (27 California Code  
27 of Regulations ("CCR") § 25102(n).)

28           19.     Proposition 65 provides that any "person who violates or threatens to violate" the  
statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The phrase



1 “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
2 probability that a violation will occur” (H&S Code §25249.11(c)). Violators are liable for civil  
3 penalties of up to \$2,500 per day for each violation of the Act. (H&S Code §25249.7.)

#### 4 FACTUAL BACKGROUND

5 20. On February 27, 1987, the State of California officially listed the chemical lead  
6 as a chemical known to cause reproductive toxicity. Lead became subject to the warning  
7 requirement one year later and was therefore subject to the “clear and reasonable” warning  
8 requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.*;  
9 H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose  
10 level (MADL) for lead is 0.5 µg/day (micrograms a day) for reproductive toxicity. (27 CCR  
11 § 25805(b).)

12 21. On October 1, 1992, the State of California officially listed the chemicals lead  
13 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became  
14 subject to the warning requirement one year later and were therefore subject to the “clear and  
15 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §  
16 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no  
17 significant risk level for lead is 15 µg/day (micrograms a day). (27 CCR § 25705(b)(1).)

18 22. On May 1, 1997, the State of California listed the chemical cadmium as a chemical  
19 known to cause reproductive toxicity. (State of California EPA OEHHA Safe Drinking Water and  
20 Toxic Enforcement Act of 1986 Chemicals Known to the State to Cause Cancer and Reproductive  
21 Toxicity.) The MADL for cadmium as a chemical known to cause reproductive toxicity is 4.1  
22 micrograms per day. (Cal. Code Regs., tit. 27, § 25805, subd. (b).)

23 23. On October 1, 1987, the State of California listed the chemicals cadmium and  
24 cadmium compounds as chemicals known to cause cancer. (State of California EPA OEHHA Safe  
25 Drinking Water and Toxic Enforcement Act of 1986 Chemicals Known to the State to Cause  
26 Cancer and Reproductive Toxicity.)

27 24. To test DEFENDANT’s PRODUCTS for lead and/or cadmium, PLAINTIFF  
28 hired a well-respected and accredited testing laboratory. The results of testing undertaken by

1 PLAINTIFF of DEFENDANT's PRODUCTS show that the PRODUCTS tested were in  
2 violation of the 0.5 µg/day (lead) and/or 4.1 µg/day (cadmium) "safe harbor" daily dose limits  
3 set forth in Proposition 65's regulations. Ingestion of lead and/or cadmium produces much  
4 higher exposure levels and health risks than dermal exposure to these chemicals.

5 25. At all times relevant to this action, DEFENDANT, therefore, has knowingly and  
6 intentionally exposed the consumers of the PRODUCTS to the LISTED CHEMICALS without  
7 first giving a clear and reasonable warning to such individuals.

8 26. The PRODUCTS have allegedly been sold by DEFENDANT for use in  
9 California since at least June 15, 2015. The PRODUCTS continue to be distributed and sold in  
10 California without the requisite warning information.

11 27. On June 15, 2018, ERC served DEFENDANT and each of the appropriate public  
12 enforcement agencies with a Proposition 65 Notice, a document entitled "Notice of Violations  
13 of California Health & Safety Code Section 25249.5" that provided DEFENDANT and the  
14 public enforcement agencies with notice that DEFENDANT was in violation of Proposition 65  
15 for failing to warn purchasers and individuals using the PRODUCTS that the ingestion of the  
16 PRODUCTS exposes them to lead and/or cadmium, chemicals known to the State of California  
17 to cause cancer and/or reproductive toxicity (a true and correct copy of the 60-Day Notice is  
18 attached hereto as **Exhibit A** and incorporated by reference).

19 28. As a proximate result of acts by DEFENDANT, as a person in the course of  
20 doing business within the meaning of Health & Safety Code section 25249.11, individuals  
21 throughout the State of California, including in the County of Alameda, have been exposed to  
22 the LISTED CHEMICALS without a clear and reasonable warning. The individuals subject to  
23 the illegal exposures include normal and foreseeable consumers of the PRODUCTS, as well as  
24 all other persons exposed to the PRODUCTS.

25 **FIRST CAUSE OF ACTION**  
26 **(Injunctive Relief for Violations of Health and Safety Code §25249.5, *et seq.* concerning**  
27 **the PRODUCTS described in the June 15, 2018, Prop. 65 Notice)**  
28 **Against DEFENDANT**

29 PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 28,

1 inclusive, as if specifically set forth herein.

2 30. By committing the acts alleged in this Complaint, DEFENDANT, at all times  
3 relevant to this action, and continuing through the present, has violated or threatens to violate  
4 H&S Code section 25249.6 by, in the course of doing business, knowingly and intentionally  
5 exposing individuals who ingest the PRODUCTS set forth in the Notice to the LISTED  
6 CHEMICALS, without first providing a clear and reasonable warning to such individuals  
7 pursuant to H&S Code sections 25249.6 and 25249.11(f).

8 31. By the above-described acts, DEFENDANT has violated or threatens to violate  
9 H&S Code section 25249.6 and is therefore subject to an injunction ordering DEFENDANT to  
10 stop violating Proposition 65, to provide warnings to all present and future customers, and to  
11 provide warnings to DEFENDANT's past customers who purchased or ingested the  
12 PRODUCTS without receiving a clear and reasonable warning.

13 32. An action for injunctive relief under Proposition 65 is specifically authorized by  
14 Health & Safety Code section 25249.7(a).

15 33. Continuing commission by DEFENDANT of the acts alleged above will  
16 irreparably harm the citizens of the State of California, for which harm they have no plain,  
17 speedy, or adequate remedy at law.

18 Wherefore, PLAINTIFF prays for judgment against DEFENDANT, as set forth  
19 hereafter.

20 **SECOND CAUSE OF ACTION**  
21 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**  
22 **PRODUCTS described in PLAINTIFF's Notice)**  
23 **Against DEFENDANT**

24 34. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 33,  
25 inclusive, as if specifically set forth herein.

26 35. By committing the acts alleged in this Complaint, DEFENDANT at all times  
27 relevant to this action, and continuing through the present, has violated H&S Code section  
28 25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals  
who ingest the PRODUCTS set forth in the Notice to the LISTED CHEMICALS, without first



1 providing a clear and reasonable warning to such individuals pursuant to H&S Code sections  
2 25249.6 and 25249.11(f).

3 36. By the above-described acts, DEFENDANT is liable, pursuant to H&S Code  
4 section 25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful  
5 exposure to the LISTED CHEMICALS from the PRODUCTS.

6 Wherefore, PLAINTIFF prays for judgment against DEFENDANT, as set forth  
7 hereafter.

8 **THE NEED FOR INJUNCTIVE RELIEF**

9 37. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through  
10 36, as if set forth below.

11 38. By committing the acts alleged in this Complaint, DEFENDANT has caused or  
12 threatens to cause irreparable harm for which there is no plain, speedy or adequate remedy at  
13 law. In the absence of equitable relief, DEFENDANT will continue to create a substantial risk  
14 of irreparable injury by continuing to cause or threatening to cause consumers to be  
15 involuntarily and unwittingly exposed to the LISTED CHEMICALS through the ingestion of  
16 the PRODUCTS.

17 **PRAYER FOR RELIEF**

18 Wherefore, PLAINTIFF accordingly prays for the following relief:

19 A. a preliminary and permanent injunction, pursuant to H&S Code section  
20 25249.7(b), enjoining DEFENDANT, its agents, employees, assigns, and all persons acting in  
21 concert or participating with DEFENDANT, from distributing or selling the PRODUCTS in  
22 California without first providing a clear and reasonable warning, within the meaning of  
23 Proposition 65, that the consumers of the PRODUCTS are exposed to the LISTED  
24 CHEMICALS;

25 B. an injunctive order, pursuant to H&S Code section 25249.7(b), compelling  
26 DEFENDANT to identify and locate each individual who has purchased the PRODUCTS since  
27 June 15, 2015, and to provide a warning to such person that ingestion of the PRODUCTS will  
28 expose the consumer to chemicals known to cause birth defects and other reproductive harm;

1 C. an assessment of civil penalties pursuant to Health & Safety Code section  
2 25249.7(b), against DEFENDANT in the amount of \$2,500 per day for each violation of  
3 Proposition 65;

4 D. an award to PLAINTIFF of its reasonable attorney's fees and costs of suit  
5 pursuant to California Code of Civil Procedure section 1021.5, as PLAINTIFF shall specify in  
6 further application to the Court; and,

7 E. such other and further relief as may be just and proper.  
8

9 DATED: August 27, 2018

LAW OFFICE OF RICHARD M. FRANCO

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13 Richard M. Franco  
14 Attorney for Plaintiff  
15 Environmental Research Center, Inc.  
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# EXHIBIT A

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## **LAW OFFICE OF RICHARD M. FRANCO**

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OAKLAND, CA 94611  
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RICK@RFRANCOLAW.COM**

### **VIA CERTIFIED/FIRST CLASS MAIL**

Current President or CEO  
Adaptogen Science, LLC  
3250 NE 1<sup>st</sup> Avenue, Suite 24  
Miami, FL 33137

Current President or CEO  
Adaptogen Science, LLC  
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Miami, FL 33126

### **VIA PERSONAL SERVICE/CERTIFIED and FIRST CLASS MAIL**

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**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

District Attorneys of Select California  
Counties and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I represent the Environmental Research Center, Inc. ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of



hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The name of the Company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Adaptogen Science, LLC**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **Adaptogen Science Tasty Whey 100% Premium Whey Protein Sea Salt Caramel - Lead**
2. **Adaptogen Science Tasty Whey 100% Premium Whey Protein Vanilla Creme - Lead**
3. **Adaptogen Science Tasty Whey 100% Premium Whey Protein Chocolate Peanut Butter - Lead**
4. **Adaptogen Science Tasty ISO Hydrolyzed 100% Whey Protein Isolate Chocolate Truffle - Lead, Cadmium**
5. **Adaptogen Science Tasty ISO Hydrolyzed 100% Whey Protein Isolate Vanilla Sundae - Lead**
6. **Adaptogen Science Tasty Whey 100% Premium Whey Protein Cookie Butter - Lead**
7. **Adaptogen Science Tasty Whey 100% Premium Whey Protein Cookies & Cream - Lead**
8. **Adaptogen Science Tasty Whey Deluxe Instantized 100% Pure Whey Protein French Vanilla Swirl - Lead**
9. **Adaptogen Science Tasty Whey Deluxe Instantized 100% Pure Whey Protein Chocolate Meltdown - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

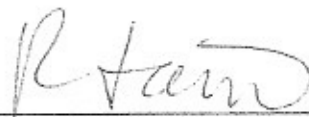
This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which has exposed and continues to expose numerous individuals within California to the identified chemicals, lead and cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and cadmium. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and cadmium. Each of these ongoing violations has occurred on every day since June 15, 2015, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time-consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rick Franco

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Adaptogen Science, LLC, and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

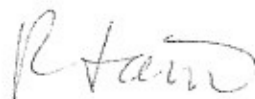
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Adaptogen Science, LLC**

I, Rick Franco, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: June 15, 2018



---

Rick Franco

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On June 15, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified and First Class Mail and by arranging for Personal Service on the Registered Agent:

Current President or CEO  
Adaptogen Science, LLC  
3250 NE 1<sup>st</sup> Avenue, Suite 24  
Miami, FL 33137

Fernando Rosenberg  
(Registered Agent for Adaptogen  
Science, LLC)  
3250 NE 1<sup>st</sup> Avenue, Suite 24  
Miami, FL 33137

Current President or CEO  
Adaptogen Science, LLC  
1342 NW 78<sup>th</sup> Avenue  
Miami, FL 33126

On June 15, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On June 15, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

June 15, 2018

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Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney  
Napa County  
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Napa, CA 94559  
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Kathryn L. Turner, Chief Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyCrimProp65@sandiego.gov

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San Francisco, CA 94103  
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney  
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222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
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County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney  
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1112 Santa Barbara Street  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

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Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

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701 Ocean Street  
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Stephan R. Passalacqua, District Attorney  
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jbarnes@sonoma-county.org

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Gregory D. Totten, District Attorney  
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Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org



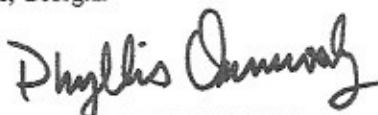
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

June 15, 2018

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On June 15, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents:  
**NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;**  
**CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on June 15, 2018, in Fort Oglethorpe, Georgia.

A handwritten signature in cursive script, reading "Phyllis Dunwoody".

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Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

June 15, 2018

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Service List

District Attorney, Alameda  
County  
1225 Fallon Street, Suite 900  
Oakland, CA 94612

District Attorney, Alpine  
County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador  
County  
708 Court Street, Suite 202  
Jackson, CA 95642

District Attorney, Butte  
County  
25 County Center Drive,  
Suite 245  
Oroville, CA 95965

District Attorney, Calaveras  
County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa  
County  
346 Fifth Street Suite 101  
Colusa, CA 95932

District Attorney, Del Norte  
County  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney, El Dorado  
County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno  
County  
2220 Tulare Street, Suite  
1000  
Fresno, CA 93721

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt  
County  
825 5th Street 4th Floor  
Eureka, CA 95501

District Attorney, Imperial  
County  
940 West Main Street, Ste  
102  
El Centro, CA 92243

District Attorney, Inyo  
County  
P.O. Drawer D  
Independence, CA 93526

District Attorney, Kern  
County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings  
County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake  
County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los  
Angeles County  
Hall of Justice  
211 West Temple St., Ste  
1200  
Los Angeles, CA 90012

District Attorney, Madera  
County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin  
County  
3501 Civic Center Drive,  
Room 130  
San Rafael, CA 94903

District Attorney, Mariposa  
County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney,  
Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced  
County  
550 W. Main Street  
Merced, CA 95340

District Attorney, Modoc  
County  
204 S Court Street, Room  
202  
Alturas, CA 96101-4020

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Nevada  
County  
201 Commercial Street  
Nevada City, CA 95959

District Attorney, Orange  
County  
401 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer  
County  
10810 Justice Center Drive,  
Ste 240  
Roseville, CA 95678

District Attorney, Plumas  
County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, San Benito  
County  
419 Fourth Street, 2nd Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
303 West Third Street  
San Bernardino, CA 92415

District Attorney, San Diego  
County  
330 West Broadway, Suite  
1300  
San Diego, CA 92101

District Attorney, San Mateo  
County  
400 County Ctr., 3rd Floor  
Redwood City, CA 94063

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
100 Courthouse Square, 2nd  
Floor  
Downieville, CA 95936

District Attorney, Siskiyou  
County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano  
County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Stanislaus  
County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
463 2nd Street  
Yuba City, CA 95991

District Attorney, Tehama  
County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tuolumne  
County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Yuba  
County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City Attorney's  
Office  
City Hall East  
200 N. Main Street, Suite  
800  
Los Angeles, CA 90012

San Francisco, City Attorney  
City Hall, Room 234  
1 Dr Carlton B Goodlett PL  
San Francisco, CA 94102

San Jose City Attorney's  
Office  
200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

**Grace Period.** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

**Governmental agencies and public water utilities.** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

**Businesses with nine or fewer employees.** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for

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<sup>2</sup> See Section 25501(a)(4).



chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.